

HOUSE BILL 261

E2

EMERGENCY BILL

2lr2172

By: **Delegates Vallario, McDermott, Anderson, Dumais, Glenn, K. Kelly, Simmons, Smigiel, Valentino-Smith, and Wilson**

Introduced and read first time: January 27, 2012

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: February 28, 2012

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – ~~Office of the Public Defender – Representation~~**
3 **Criminal Defendants – Court Appearances**

4 FOR the purpose of ~~repealing the requirement that the Office of the Public Defender~~
5 ~~provide representation to a certain indigent individual in all stages of a certain~~
6 ~~proceeding; altering the specific events in which the Office of the Public~~
7 ~~Defender is required to represent indigent individuals in criminal proceedings;~~
8 ~~providing that a certain provision of law may not be construed to require~~
9 ~~representation by the Office of the Public Defender at a certain initial~~
10 ~~appearance~~ declaring the intention of the General Assembly to monitor certain
11 issues and determine whether modification of this Act is required at a certain
12 time; prohibiting certain ex parte communications between a District Court
13 commissioner and a State’s Attorney, an attorney for the defendant, or a law
14 enforcement officer; prohibiting a certain statement made by a defendant
15 during the course of an initial appearance before a District Court commissioner
16 from being used as evidence against the defendant in a criminal proceeding or
17 juvenile proceeding; establishing that a defendant who is denied pretrial release
18 by a District Court commissioner or who remains in custody after a District
19 Court commissioner has determined conditions of release under certain
20 circumstances must be presented to a District Court or circuit court judge
21 within a certain time period except under certain circumstances at a certain
22 time; repealing the requirement that the Office of the Public Defender provide
23 representation to a certain indigent individual in all stages of a certain
24 proceeding; altering the specific events in which the Office of the Public

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Defender is required to represent indigent individuals in criminal proceedings;
 2 requiring the Office of the Public Defender to provide representation to an
 3 indigent individual at a bail hearing before a District Court or circuit court
 4 judge; providing that representation is not required to be provided by the Office
 5 of the Public Defender to certain indigent individuals at a certain initial
 6 appearance before a District Court commissioner; establishing a Task Force to
 7 Study the Laws and Policies Relating to Representation of Indigent Criminal
 8 Defendants by the Office of the Public Defender; providing for the membership
 9 and duties of the Task Force; providing for the designation of a chair of the Task
 10 Force; requiring the Department of Legislative Services to provide staff for the
 11 Task Force; prohibiting members of the Task Force from receiving
 12 compensation; authorizing a member to receive certain reimbursement;
 13 requiring the Task Force to report its findings and recommendations to the
 14 Governor and the General Assembly on or before certain dates; providing for the
 15 application of certain provisions of this Act; providing for the termination of a
 16 certain provision of this Act; making this Act an emergency measure; and
 17 generally relating to ~~representation by the Office of the Public Defender.~~ court
 18 appearances by criminal defendants.

19 BY adding to

20 Article – Courts and Judicial Proceedings
 21 Section 2–607(f) and 10–922
 22 Annotated Code of Maryland
 23 (2006 Replacement Volume and 2011 Supplement)

24 BY adding to

25 Article – Criminal Procedure
 26 Section 5–215
 27 Annotated Code of Maryland
 28 (2008 Replacement Volume and 2011 Supplement)

29 BY repealing and reenacting, with amendments,

30 Article – Criminal Procedure
 31 Section 16–204
 32 Annotated Code of Maryland
 33 (2008 Replacement Volume and 2011 Supplement)

34 Preamble

35 WHEREAS, This Act implements a right to counsel at bail hearings before a
 36 District Court or circuit court judge in response to the decision of the Court of Appeals
 37 of Maryland in DeWolfe v. Richmond, No. 34, September 2011 Term, issued January 4,
 38 2012; and

39 WHEREAS, The Court in DeWolfe v. Richmond held that the plain meaning of §
 40 16–204(b) of the Criminal Procedure Article prior to enactment of this Act entitled

1 indigent defendants to public defender representation at an initial appearance before a
2 District Court commissioner; and

3 WHEREAS, The question of whether or not a constitutional right to counsel
4 before a District Court commissioner exists was not reached by the Court of Appeals;
5 and

6 WHEREAS, It is anticipated that this question will be addressed by the Court
7 of Appeals or other appropriate appellate court as part of continuing litigation in
8 DeWolfe v. Richmond or another claim or action; and

9 WHEREAS, The Task Force established by Section 3 of this Act shall address
10 the adequacy and cost of laws and policies regarding the representation of indigent
11 defendants by the Public Defender and the District Court commissioner and pretrial
12 release systems; now, therefore,

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That it is the intent of the General Assembly to continue to monitor the
15 issues relating to representation of indigent defendants and to determine whether
16 modification of this Act is required during the 2015 session of the General Assembly or
17 earlier if an appellate court issues a decision related to the relevant issues in DeWolfe
18 v. Richmond or the Task Force established under Section 3 of this Act issues its report
19 and recommendations.

20 ~~SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
21 ~~MARYLAND~~ 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
22 as follows:

23 Article – Courts and Judicial Proceedings

24 2-607.

25 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
26 SUBSECTION, EX PARTE COMMUNICATIONS BETWEEN A DISTRICT COURT
27 COMMISSIONER AND A STATE’S ATTORNEY, AN ATTORNEY FOR THE
28 DEFENDANT, OR A LAW ENFORCEMENT OFFICER ARE PROHIBITED.

29 (2) AN EX PARTE COMMUNICATION FOR SCHEDULING,
30 ADMINISTRATIVE, OR EMERGENCY PURPOSES IS ALLOWED, IF:

31 (I) THE COMMUNICATION DOES NOT ADDRESS
32 SUBSTANTIVE MATTERS;

33 (II) NO PARTY WILL GAIN A PROCEDURAL, SUBSTANTIVE,
34 OR TACTICAL ADVANTAGE AS A RESULT OF THE COMMUNICATION; AND

1 (iii) THE COMMISSIONER PROMPTLY NOTIFIES THE OTHER
2 PARTIES AND GIVES THEM AN OPPORTUNITY TO RESPOND.

3 10-922.

4 A STATEMENT MADE DURING THE COURSE OF AN INITIAL APPEARANCE OF
5 A DEFENDANT BEFORE A DISTRICT COURT COMMISSIONER IN ACCORDANCE
6 WITH MARYLAND RULE 4-213 MAY NOT BE USED AS EVIDENCE AGAINST THE
7 DEFENDANT IN A CRIMINAL PROCEEDING OR JUVENILE PROCEEDING.

8 Article – Criminal Procedure

9 5-215.

10 A DEFENDANT WHO IS DENIED PRETRIAL RELEASE BY A DISTRICT COURT
11 COMMISSIONER OR WHO FOR ANY REASON REMAINS IN CUSTODY AFTER A
12 DISTRICT COURT COMMISSIONER HAS DETERMINED CONDITIONS OF RELEASE
13 UNDER MARYLAND RULE 4-216 SHALL BE PRESENTED TO A DISTRICT COURT
14 OR CIRCUIT COURT JUDGE WITHIN 48 HOURS OF THE DETERMINATION BY THE
15 DISTRICT COURT COMMISSIONER, EXCEPT FOR WEEKENDS AND HOLIDAYS
16 IMMEDIATELY IF THE COURT IS IN SESSION, OR IF THE COURT IS NOT IN
17 SESSION, AT THE NEXT SESSION OF THE COURT.

18 16-204.

19 (a) Representation of an indigent individual may be provided in accordance
20 with this title by the Public Defender or, subject to the supervision of the Public
21 Defender, by the deputy public defender, district public defenders, assistant public
22 defenders, or panel attorneys.

23 (b) (1) Indigent defendants or parties shall be provided representation
24 under this title in:

25 (i) a criminal or juvenile proceeding in which a defendant or
26 party is alleged to have committed a serious offense;

27 (ii) a criminal or juvenile proceeding in which an attorney is
28 constitutionally required to be present prior to presentment being made before a
29 commissioner or judge;

30 (iii) a postconviction proceeding for which the defendant has a
31 right to an attorney under Title 7 of this article;

32 (iv) any other proceeding in which confinement under a judicial
33 commitment of an individual in a public or private institution may result;

1 (v) a proceeding involving children in need of assistance under §
2 3–813 of the Courts Article; or

3 (vi) a family law proceeding under Title 5, Subtitle 3, Part II or
4 Part III of the Family Law Article, including:

5 1. for a parent, a hearing in connection with
6 guardianship or adoption;

7 2. a hearing under § 5–326 of the Family Law Article for
8 which the parent has not waived the right to notice; and

9 3. an appeal.

10 (2) (I) Representation shall be provided to an indigent individual in
11 [all stages of] a proceeding listed in paragraph (1) of this subsection, including, in
12 criminal proceedings, [custody, interrogation,] ~~AT BAIL REVIEW BAIL HEARING~~
13 ~~BEFORE A DISTRICT COURT OR CIRCUIT COURT JUDGE~~, preliminary hearing,
14 arraignment, trial, and appeal.

15 (II) ~~THIS PARAGRAPH MAY NOT BE CONSTRUED TO~~
16 ~~REQUIRE REPRESENTATION AT AN INITIAL APPEARANCE IN DISTRICT COURT~~
17 ~~OR CIRCUIT COURT UNDER MARYLAND RULE 4-213. REPRESENTATION IS NOT~~
18 ~~REQUIRED TO BE PROVIDED TO AN INDIGENT INDIVIDUAL AT AN INITIAL~~
19 ~~APPEARANCE BEFORE A DISTRICT COURT COMMISSIONER.~~

20 SECTION 3. AND BE IT FURTHER ENACTED, That:

21 (a) There is a Task Force to Study the Laws and Policies Relating to
22 Representation of Indigent Criminal Defendants by the Office of the Public Defender.

23 (b) The Task Force consists of the following members:

24 (1) two members of the Senate of Maryland, appointed by the
25 President of the Senate on or before May 1, 2012;

26 (2) two members of the House of Delegates, appointed by the Speaker
27 of the House on or before May 1, 2012;

28 (3) the Governor of Maryland, or the Governor's designee;

29 (4) the Public Defender of Maryland, or the Public Defender's
30 designee;

31 (5) the Chief Judge of the District Court of Maryland, or the Chief
32 Judge's designee;

1 (6) the Coordinator of Commissioner Activity of the District Court of
2 Maryland, or the Coordinator's designee;

3 (7) the Superintendent of State Police, or the Superintendent's
4 designee;

5 (8) the Attorney General of Maryland, or the Attorney General's
6 designee;

7 (9) the Secretary of Public Safety and Correctional Services, or the
8 Secretary's designee; and

9 (10) the following individuals, appointed by the Governor on or before
10 May 1, 2012:

11 (i) a representative of the Maryland State's Attorneys'
12 Association;

13 (ii) an attorney representing the plaintiffs in the Quinton
14 Richmond, et al. v. Paul DeWolfe, Jr., et al. litigation;

15 (iii) a representative of the Maryland Chiefs of Police
16 Association, Inc.;

17 (iv) a representative of the Maryland Sheriffs' Association;

18 (v) a representative of the Maryland Correctional
19 Administrators Association;

20 (vi) an advocate for the rights of victims of domestic violence;

21 (vii) a victims' rights advocate;

22 (viii) a representative of the Maryland Association of Counties;

23 (ix) a representative of the Pretrial Justice Institute;

24 (x) a representative of the Public Justice Center;

25 (xi) a representative of NAACP – Legal Defense;

26 (xii) a representative of the National Association of Criminal
27 Defense Lawyers;

28 (xiii) a representative of the American Civil Liberties Union; and

1 (xiv) an academic expert in the provision of counsel to the
2 indigent.

3 (c) On or before May 1, 2012, the Governor shall appoint a chair of the Task
4 Force from its membership.

5 (d) The Department of Legislative Services shall provide staff for the Task
6 Force.

7 (e) A member of the Task Force:

8 (1) may not receive compensation for serving as a member of the Task
9 Force; but

10 (2) is entitled to reimbursement for expenses under the Standard
11 State Travel Regulations, as provided in the State budget.

12 (f) The Task Force shall:

13 (1) study the adequacy and cost of State laws and policies relating to:

14 (i) representation of indigent criminal defendants by the Office
15 of the Public Defender; and

16 (ii) the District Court commissioner and pretrial release
17 systems; and

18 (2) consider and make recommendations regarding options for and
19 costs of improving:

20 (i) the system of representation of indigent criminal
21 defendants; and

22 (ii) the District Court commissioner and pretrial release
23 systems.

24 (g) (1) On or before November 1, 2012, the Task Force shall submit an
25 interim report of its findings and recommendations to the Governor and, in accordance
26 with § 2-1246 of the State Government Article, the Senate Judicial Proceedings
27 Committee and the House Judiciary Committee.

28 (2) On or before November 1, 2013, the Task Force shall submit a final
29 report of its findings and recommendations to the Governor, and, in accordance with §
30 2-1246 of the State Government Article, the Senate Judicial Proceedings Committee
31 and the House Judiciary Committee.

1 SECTION 4. AND BE IT FURTHER ENACTED, That the obligation of the
2 Office of the Public Defender to provide representation to indigent defendants at bail
3 hearings before District Court or circuit court judges under § 16-204 of the Criminal
4 Procedure Article, as enacted by Section 2 of this Act, applies only to bail hearings
5 occurring on or after June 1, 2012.

6 SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That this Act is an
7 emergency measure, is necessary for the immediate preservation of the public health
8 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
9 members elected to each of the two Houses of the General Assembly, and shall take
10 effect from the date it is enacted. Section 3 of this Act shall remain effective until June
11 1, 2014, and, at the end of May 31, 2014, with no further action required by the
12 General Assembly, Section 3 of this Act shall be abrogated and of no further force and
13 effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.